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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,463	03/17/2004	Robert A. Walker	1908.001US1	3988

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/802,463

Applicant(s)

WALKER ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/2/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 2/23/2006 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "the opening in the plate" in line 1. There is insufficient antecedent basis for this limitation in the claim. Neither this claim nor any claim upon which it is dependent includes a limitation of an opening. The examiner previously considered that, as best could be determined, it appeared applicant intended this claim to be dependent upon the preceding claim 9, which introduced an opening in the plate.

In the response filed 2/23/2006, rather than amending claim 10 to be dependent upon claim 9, applicant has amended claim 10 now to be dependent upon claim 1. However, as was previously noted, claim 1 also does not introduce an opening. Accordingly, applicant's amendment has failed to correct the previous rejection under 35 USC 112 and does not shed any light as to the full scope that applicant intends claim 10 to possess. Again for the purpose of an

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examination on the merits, the examiner has considered that applicant intended claim 10 to be dependent upon claim 9, which introduces limitations of an opening in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 6-9, 11-17, and 20-28 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,126,881 to Blotsky (“Blotsky”).

Blotsky disclosures in the specification and Figures 1-5 an invention in the same field of endeavor and as described in applicant’s claims 1-3, 6-9, 11-17, and 20-28. In particular, Blotsky shows a barbecue stove that is considered a furnace as recited that includes a combustion chamber (11), and a burn pot (37 in conjunction with top rods 34) within the combustion chamber that includes a sidewall (38 and side portions of 34) and a movable floor (43 or 53). The moveable floor has an opening at least as large as the cross-sectional area of the bottom of the burn pot and has an actuator (44 or 54) for controlling the floor’s movement. Blotsky also shows a translatable plate (38) that has openings (29) that appear substantially the same size as the lower cross sectional are of the burn pot (compare Figs. 2 and 6). Further, these openings may be cut or formed in different shapes or sizes (see col. 4, lines 30-31). As the rod portions (34) are considered part of the burner pot, the movement of the translatable plate (28) is

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considered to be through an internal volume of the pot (note col. 2, lines 37-38). The translatable plate is moved by actuator (33).

In regard to at least claims 12, 20, and 21, these claims do not specify the structure of the actuator. As noted above, both the moveable floor (43 or 44) and the translatable plate (28) of Blotsky have actuator structures that are individually controllable. Thus, these actuators are capable of being operated substantially simultaneously with one another. Further, in operating the actuators in unison these actuators would properly be considered an actuator for moving both the floor and plate.

In regard to at least claims 23-28, Blotsky is considered to show all the steps of these claims. In particular, Blotsky shows combusting fuel in the form of charcoal briquettes that lie within combustion chamber/bowl (11) to thereby form what is considered a column of ash (see at least col. 3, lines 7-15). When it is desired to remove the collected ash, translatable plate (28) is manipulated such that ash is caused to drop down through openings (29) and contacts screen (41). This screen serves to separate more completely burned ash from less burned coals (see col. 3, lines 26-31). The ash is then removed through bottom (42) by operation of moveable floor (either floor 43, Fig. 5 or the variation of floor 53, Fig. 6). This operation in Blotsky is considered anticipated the moving a translatable plate and removing a ash column as recited in applicant's claims.

In regard to at least claim 24, the rotational motion of bottom member (53 in the embodiment of Fig. 6) includes the same pivoting motion described by applicant to constitute cutting. Further, as noted above, fuel is added to the top of the burn pot and the resulting ash is emptied from the bottom when desired (see col. 1, lines 23-34).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 4, 18, 19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blotsky as applied to the claims above in view of U.S. Patent No. 3,209,743 to Stewart et al. ("Stewart").

Blotsky discloses all the limitations of claims 4, 18, 19, and 22, except that the floor includes a grill portion and possible for an igniter in fluid communication with the burn pot.

Stewart teaches a stove/furnace in the same field of endeavor as both applicant's invention and Blotsky. In Stewart, a burn pot (23) is included that is similar to that shown in Blotsky. This burn pot (23) includes a lower floor that includes openings (32) that are

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considered to form a grill structure. These openings allow for air to enter the burn pot to promote burning of materials therein (see col. 3, lines 41-46). Further, as shown in Figure 4, when combustible materials are included in the burn pot an igniter (the illustrated match) is in fluid communication with the burn pot (see col. 4, lines 13-17)

Therefore, in regard to claims 4, 18, 19, and 22, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burn pot of Blotsky to incorporate the lower holes and igniter of Stewart in order to for ignition of combustible materials within the pot and for sustaining the combustion with a supply of air (see Stewart, col. 3, lines 41-46 and col. 4, lines 13-17).

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blotsky as applied to claim 1 above in view of U.S. Patent No. 5,582,117 to Mendive et al. ("Mendive").

Blotsky discloses all the limitations of claim 5 except for openings in the sidewall of the burner pot.

Mendive teaches a burn pot in the same field of endeavor as applicant's invention and Blotsky. In Mendive, the burn pot (10) is similar to that of Blotsky in that it includes a lower ash dumping floor and also includes a sidewall with air openings (28). These air openings (28) provide for air flow around combustible material within the burn pot (see col. 3, lines 37-41).

Therefore, in regard to claim 5, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burn pot of Blotsky to incorporate side wall openings as taught in Mendive for the desirable purpose of promoting air flow for combustion within the burn pot (see Mendive, col. 3, lines 37-41).

Allowable Subject Matter

10. Claim 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. The examiner notes that in order to have conducted an examination on the merits on this claim 10 (note the 35 USC 112 rejections above), the claim was considered to be dependent upon claim 9, which is in turn dependent upon claim 1. Therefore, this indication of allowable subject matter is contingent upon claim 10 incorporating the limitations of claim 9 and claim 1.

Response to Arguments

11. Applicant's arguments filed 2/23/2006 have been fully considered but they are not persuasive.

Applicant has argued that Blotsky does not show a burn pot that is within the combustion chamber as recited in applicant's claims. However, the examiner notes that the burn pot structure of applicant's claims was asserted to be met in Blotsky by the structural elements of the body (37) with the upper rods (34). These rods (34) form a support for sleeve (20), which extends down into the body (37), and plate (28) that is mounted for rotation within rods (34). In reading applicant's burn pot on these elements in Blotsky, the result is that the at least rods (34) lie within combustion chamber/bowl (11) (see Fig. 1). Accordingly, applicant's recitation of the burn pot and its orientation with respect to the combustion chamber are not considered to read

over Blotsky. As applicant's claim 1 does not distinguish over Blotsky, applicant's arguments that claims 2-3, 6-9, and 11-12 are allowable is not persuasive.

Applicant has argued that the screen (41) of Blotsky cannot correspond to the translatable plate of applicant's claims. However, the examiner has considered that the operation of translatable plate (28) and the finer ash sorting operation of the screen correspond to applicant's relevant claim recitations and not simply the screen itself. Accordingly, applicant's arguments as to the patentability of claims 13-17 and 20-22 are not persuasive.

In regard to claims 23-28, applicant has argued that Blotsky does not show a translatable plate and moveable floor. However, the examiner notes that plate (28) and moveable floor (either 43 or 53) meet these limitations.

Applicant's arguments as to the patentability of claims 4, 5, 18, 19, and 22, appear to relate substantially to those that were asserted to apply to claims 1-3, 6-9, 11-17, and 20-28. For the reasons, noted above those elements asserted by applicant not to be present, have been identified in the prior art by the examiner.

Accordingly, applicant's claims 1-9 and 11-28 are not considered to patentably distinguish over the prior art of record.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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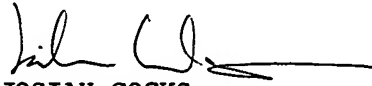
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jcc
May 11, 2006


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749